

**REMARKS**

Claims 15-21, 27 and 28 are rejected, under 35 U.S.C. § 102, as being anticipated in view of Berke '400. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

In order to properly support a rejection under 35 U.S.C. 102(b) the applied reference must disclose, teach or suggest each and every feature of the presently claimed invention. It is an important aspect and feature of the present invention that one of the layers of the blanket is fabricated from porous, or "pervious" material as discussed at least at paragraph's 016 and 017 of the Applicant's specification;

Delivering heat spread over the surface of the porous material advantageously has the effect of evenly warming the patient without forming relatively high velocity streams of air (as in the prior art blanket where the air is delivered via discreet holes).

In this regard, independent claim 15 has been amended to incorporate the subject matter of previous claim 17 including the feature that, "one of the two layers of the blanket has a portion of its surface *formed of pervious material* so that the warmed air is delivered to the patient receiving space via the pervious material".

It is respectfully submitted that the "Hyperthermia" article described in Berke '400 is not formed of pervious material. The Examiner is directed to column 3 line 34 of Berke, where it is clearly stated that, "[t]he material is water-proof and air impervious." In order to allow airflow to a patient, air holes are punched into the article (column 3 lines 60 to 65). Therefore, in contradistinction from the Applicant's claimed invention the material disclosed by Berke '400 is impervious. Airholes must be punched into the material in order to provide for airflow. Persons skilled in the art would clearly understand the difference between pervious material (which allows for airflow substantially over the entire pervious surface) and an impervious material with airholes punched in it.

Besides the fact that such a feature of the presently claimed invention is not disclosed, taught or suggested by the cited reference, there are significant practical differences between the arrangements. Problems with blankets with airholes for the provision of warm air are clearly enunciated in the preamble of the specification of the present application (see particularly pages 1 and 2). For example, depending on the velocity at which warm air is pumped from the heating unit through the airholes, a "jet" effect can occur and the patient can actually be cooled rather than warmed. This is a problem which is not addressed by Berke `400 and in fact may be exacerbated by the reference. It is particularly critical for small humans and animals, where discreet holes in the inner layer of a warming blanket (or the article of Berke) could result in cooling of the animal or small human patient which could lead to death. It should also be noted that there is no suggestion in Berke of using the article with animals or small animals (claims 19 and 30).

Turning to the newly added claims, support for new claim 30 is clearly found in the specification, for example at page 2 lines 1 to 15 and page 3 lines 14 to 17. In the veterinary art the term "small animal" conveys a clear meaning.

With respect to independent claim 27, another difference between Berke `400 and the present invention, is that in the present invention the blanket is arranged for use in surgery. There is no suggestion of the use of an article such as that disclosed in the applied reference for surgery on a human or animal. In fact, Berke `400 teaches away from use of the article during surgery. See column 1 lines 15 and 16 and 39 and 40. It is clear that Berke envisages utilizing the article post operation in order to reduce the chances of hypothermia. There is no suggestion anywhere in the specification of utilizing the article during surgery. This is not surprising, as Berke would not be suitable for use during surgery. Having air blown at relatively high velocity through a small hole can result in contamination of a surgical site, for example via substances blown on to the surgical site by air from the airholes (see page 2 of the applicant's specification, lines 28 to 33). In contrast, in the present invention, heat is delivered over the

entire portion of the surface which is pervious (in one embodiment the upper layer may be entirely pervious to ensure delivery of warm air to the patient receiving space). Delivering heat spread over the surface has the effect of evenly warming the patient without forming relatively high velocity streams of air (see page 3 lines 8 to 22).

There are therefore two major differences between Berke and the present invention, neither of which are disclosed or suggested by Berke.

1. The use of an article such as described in the present application for use during surgery.
2. The use of an article where warm air is delivered to the patient receiving space via pervious material.

Note that independent method claim 27 is limited to application of the patient warming blanket during surgery.

A further feature not shown in Berke is now claimed in dependent claims 29 and 36. Berke is an article which may be manipulated to form a patient receiving space. In an embodiment of the present invention, however, the article is a blanket and the two arms of the "U" are joined by a "continuation" 7 of the first layer to provide a blanket base on which the patient may lie (page 6 lines 15 to 18).

Regarding the Examiners's comments in paragraph 2, it is respectfully submitted that the article of Berke does not create a "blanket" of warm air. Instead, air is provided via small holes, with all the requisite disadvantages discussed above. Further, there is no portion of the surface of the article of Berke which is pervious to air. The article is impervious, with airholes to provide outlets for air.

Amendments have been made to claims 19 and 21 (and corresponding method claims) to make clear that the blanket is sized and shaped so as to maintain the warmth of the animal

or human. Although an animal may be able to be received by the article of Berke, Berke only teaches this article for use with a human. A small animal, for example, would require a smaller article so that the animal would be sufficiently warmed. We therefore submit that Berke does not teach an arrangement which is sized and shaped to receive an animal "whereby to maintain warmth of the animal".

Claims 15-21, 27 and 28 are rejected, under 35 U.S.C. § 103, as being unpatentable in view of the Applicant's admitted prior art, and Berke `400. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks. As best the Applicant understands the obviousness rejection with regards to the issue of a warming "blanket" as discussed in the Background of the Invention in the Applicant's specification, the Applicant notes that Berke `400 is exactly the type of prior art warming "blanket", "article" or "device" which the Applicant's presently claimed invention is designed to overcome.

That being said there is nothing in the prior art, as discussed in the Applicant's specification or otherwise, which suggests or discloses the two features discussed above with respect to amended claim 15 and the anticipation rejection. Even if it is somehow possible to combine the Applicant's Background of the Invention with Berke `400 there is still no suggestion or disclosure of (1) a porous or pervious material utilized to fabricate such a warming blanket, or (2) a surgical warming blanket with the particularly described structure for facilitating use during surgery. Again, claim 15 specifically recites, "A surgical warming blanket arranged for use during surgery on a patient and comprising at least two layers... wherein one of the two layers of the blanket has a portion of its surface formed of pervious material so that the warmed air is delivered to the patient receiving space via the pervious material." As neither of these specifically claimed features are disclosed, taught or suggested either by Berke `400 or the Applicant's disclosure alone or in combination, it is respectfully submitted that the invention now claimed is novel and inventive.

Claims 22-26 are rejected, under 35 U.S.C. § 103, as being unpatentable over in view of the Applicant's admitted prior art, and/or Berke `400 and further in view of Mason et al. `951 or Cobb `132. The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks. As the Examiner is aware, in order to properly support a combination of references, the combined references themselves must provide some disclosure, teaching or suggestion which would lead one of ordinary skill in the art to combine the references in order to meet the specific features of the rejected claims. The Federal Courts have long held that there must be some teaching or suggestion of combining the various elements or components of the references as disclosed or taught by the Applicant's disclosure or invention,

Undoubtedly, these patents disclose, individually, the separate elements or components of the invention. However, none of them teaches or even suggests combining these various elements or components in the manner taught by Silman, and it is well settled that references may not be combined where there is no suggestion in any of the references that they can be combined to meet the recitations of the claims. United Merchants and Manufacturers, Inc. v. Commissioner of Patents, 139 USPQ 199, 200 (DC, District of Columbia 1963).

Regarding the objections to claims 22 through 26, it is respectfully submitted that there appears to be no reason disclosed in Mason or Berke to make a combination between Mason and Berke. Mason `951 discloses a closed circuit water circulation system, which arguably discloses a shutoff valve for couplings 26, 28. If such shutoff's are not employed in Mason `951, the device might continue to pump water, hot or cold, out of the reservoir when the coupling are undone or inadvertently uncoupled. Such loss of circulatory fluid could damage the circulation pump. The Hyperthermia Article disclosed by Berke `400 is an entirely different and open circuit device for providing warm air to a hyperthermic patient. Thus, the Applicant does not believe that either of these references contain any such similarities, much less disclosure

or teachings beyond their basic use in the medical field, which would lead one of skill in the art to combine the references.

Even if these references can be combined, they still do not disclose teach or suggest all the features of the present invention. Specifically claim 22 recites the feature "...a feedback means for determining whether a patient warming blanket is attached.." It is the Applicant's position that a conventional valve shutoff as disclosed in Mason at col. 4, line 5 is not a feedback device. In fact the valve shutoff in Mason '951 is undoubtedly merely actuated by coupling and uncoupling the respective male and female connectors. In other words, the valve shutoff is not dependent on any sort of feedback from the fluid pressure, only on whether the connectors are coupled. Therefore, it is respectfully submitted that the features of claim 22 through 26 are not disclosed, taught or suggested by the applied references, either alone or in combination, and thus these claims are also believed to be novel and inventive over the references cited by the Examiner.

Further, there appears to be none of the required teaching or disclosure to make the combination of Cobb et al. '132 and Berke '400 as submitted in Examiner's paragraph 7. Without some teaching or disclosure in the references which would lead one of skill in the art to such a combination, there can be no motivation or suggestion to combine or modify Berke '400 with the disclosures of the other citations, including Cobb et al. '132, as made by the Examiner. See *Brown and Williamson Tobacco Corp. vs. Philip Morris Inc.* 229F3d 1120, 56 USPQ 2d 1456, (Fed. Cir. 2000).

Again even if these references are combinable, and the Applicant adamantly disputes such a combination, neither of these references either alone or in combination disclose a feedback means or device as specifically recited in claim 22. At paragraph 0045 Cobb et al. '132 merely discloses "...a hose connection sensor 110 as shown schematically in FIG.2." This sensor is not any sort of pressure feedback sensor as in the Applicant's claimed invention and

in claim 22, but is in fact merely "...a micro-switch suitably placed to detect the improper attachment of the flexible conduit 102 to the warm air blower system 100."

New method claims 31 through 37 are based on features clearly described in the specification and also originally claimed in "apparatus" claims. Additionally, new independent claim 37 has been added to further clarify the "pervious material" as disclosed in the specification and recited in the claims. The importance of the pervious material as discussed in the Applicant's specification, at least at paragraph 017, is that an even heating of the patient is accomplished without forming the high velocity streams of air which occur for example in the holes of Berke `213. Accordingly, claim 37 recites that one of the layers of the blanket is, "...formed of pervious material so that the warmed air is delivered to the patient receiving space evenly *across the entire surface* of the pervious material..." (Emphasis added). Notably, Berke `400 cannot distribute the heat or fluid flow evenly across its entire surface. Berke `400 forces air out of the discreet air holes 20 only at certain selected areas of the blanket where the holes are cut. This can lead to the issue of actually chilling the patient due to the directed air flow rather than warming as discussed in the Specification at paragraph 010

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised anticipation and obviousness rejections should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejections or applicability of the Berke `213, Cobb `132, and Mason `400 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the

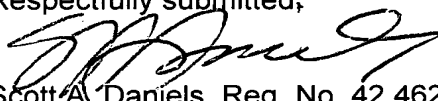
Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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